REMARKS:

Claims 1-13 and 27-33 are currently pending in the application.

Claims 14-26 have been previously canceled without *prejudice*.

Claims 1-13 and 27-33 stand rejected under 35 U.S.C. § 102(b) under a new ground of rejection under 37 C.F.R. § 41.50(b) over U.S. Patent No. 5,758,327 to Gardner *et al.* ("*Gardner*").

REJECTION UNDER 35 U.S.C. § 102(b):

Claims 1-13 and 27-33 stand rejected under 35 U.S.C. § 102(b) under a new ground of rejection under 37 C.F.R. § 41.50(b) over *Gardner*.

Applicants respectfully submit that *Gardner* fails to disclose each and every limitation recited by Claims 1-13 and 27-33. Applicants further respectfully submit that Claims 1-13 and 27-33 patentably distinguish over *Gardner*. Thus, Applicants respectfully traverse the Examiner's rejection of Claims 1-13 and 27-33 under 35 U.S.C. § 102(b) over *Gardner*.

***Gardner* Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims**

For example, with respect to independent Claim 1, this claim recites:

> A ***fulfillment system associated with a distributed supply chain***, comprising:
>
> ***a database operable to store***:
>
> at least one ***customer-specified rule identifying a sourcing constraint*** associated with a customer; and
>
> at least one ***contract value*** associated with a current status of a contract involving the customer; and
>
> ***one or more processors collectively operable to***:
>
> ***receive an available-to-promise (ATP) request*** comprising a plurality of request line-items each corresponding to a desired product;
>
> ***generate one or more component ATP requests*** using at least one rule in the database and based on the request line-items;

communicate the component ATP requests to at least one supplier associated with the desired product, the supplier determined ***according to at least one customer-specified rule*** identifying the sourcing constraint;

receive a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and ***comprising product availability information for one or more corresponding desired products***; and

generate a quotation for communication ***using*** the product availability information and the contract value in the database. (Emphasis Added).

Independent Claims 27-29 recite similar limitations. *Gardner* fails to disclose each and every limitation of independent Claims 1 and 27-29.

Applicants respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a "***fulfillment system associated with a distributed supply chain***" and in particular *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a "***fulfillment system associated with a distributed supply chain***" comprising a database and a processor. Rather, the system in *Gardner* merely operates according to the flowchart shown in Figure 3. Applicants respectfully direct the Examiner's attention to Figure 3 in *Gardner*:

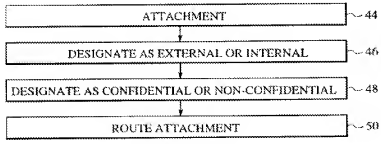

FIG. 3

Applicants respectfully submit that the flowchart in Figure 3, does not include, involve, or even relate to a "***fulfillment system associated with a distributed supply chain***," as recited in independent Claim 1. Thus, *Gardner* cannot anticipate Applicants independent Claim 1, because, among other things, *Gardner* fails to identically disclose each and every element of Applicants claimed invention, arranged as they are in Applicants claims.

Applicants respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a "***database operable to store*** at least one ***customer-specified rule identifying a sourcing constraint*** associated with a customer and at least one ***contract value*** associated with a current status of a contract involving the customer" and in particular *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a database capable of storing data in the form of rules. By contrast, *Gardner* does not disclose a "***database operable to store*** at least one ***customer-specified rule identifying a sourcing constraint*** associated with a customer and at least one ***contract value*** associated with a current status of a contract involving the customer," as recited in independent Claim 1 but rather merely provides customers with an online catalog, receives orders, acquires authorizations mandated by the customer's rules, and transmits a purchase order.

In fact, Applicants find no such teachings anywhere in *Gardner* regarding a "***database operable to store*** at least one ***customer-specified rule identifying a sourcing constraint***," as recited in independent Claim 1, rather, the only rules disclosed in *Gardner* are requisition rules which merely regard "the procedure to be followed in the procurement of goods and services." (Column 1, lines 13-14). Applicants respectfully submit that the requisition rules as disclosed in *Gardner*, do not equate to ***customer-specified rules identifying a sourcing constraint***, as recited in independent Claim 1 because, among other things, the requisition rules in *Gardner* are merely regarding the procedure to be followed in the procurement of goods and services. Thus, *Gardner* cannot anticipate Applicants independent Claim 1, because, among other things, *Gardner* fails to identically disclose each and every element of Applicants claimed invention, arranged as they are in Applicants claims..

Applicants further respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding "***one or more processors***" collectively operable to "***receive an available-to-promise (ATP) request*** comprising a plurality of request line-items each corresponding to a desired product," "***generate one or more component ATP requests*** using at least one rule in the database and based on the request line-items," "***receive a plurality of component quotations from at least one supplier***, each component quotation corresponding to a component ATP request and ***comprising product availability information for one or more corresponding desired products***," and "***generate a quotation*** for communication ***using*** the

product availability information and the contract value in the database." In addition, *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding a processor capable of receiving, communicating, and generating data in the form of requests and quotes.

By contrast, *Gardner* does not disclose a "***one or more processors***" collectively operable to "***receive an available-to-promise (ATP) request*** comprising a plurality of request line-items each corresponding to a desired product," "***generate one or more component ATP requests*** using at least one rule in the database and based on the request line-items," "***receive a plurality of component quotations from at least one supplier***, each component quotation corresponding to a component ATP request and ***comprising product availability information for one or more corresponding desired products***," and "***generate a quotation*** for communication ***using*** the product availability information and the contract value in the database," as recited in independent Claim 1 but rather merely teaches pre-negotiated prices, that is, if the prices are pre-negotiated in *Gardner* and the purchase order is already approved by the purchaser in *Gardner*, then the vendor does not and will not send a "quotation" to the purchaser. Thus, Applicants respectfully submit that the equations forming the foundation of the Examiner's comparison between *Gardner* and independent Claim 1 cannot be made. Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Gardner*. Thus, *Gardner* cannot anticipate Applicants independent Claim 1, because, among other things, *Gardner* fails to identically disclose each and every element of Applicants claimed invention, arranged as they are in Applicants claims.

The Office Action has Failed to Properly Establish a *Prima Facie* case of Anticipation over *Gardner*

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co*., 814 F.2d 628,631 (Fed. Cir. 1987). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc*., 927 F.2d 1565, 1576 (Fed. Cir. 1991).

In addition, as noted in the Decision on Appeal "As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith," *In re Brown*, 459 F.2d 531,534 (CCPA 1972).

With respect to the subject application, *Gardner* fails to disclose, teach, or suggest each and every element of Applicants claimed invention and is structurally different from that of Applicants claimed invention. For example, *Gardner* fails to describe a system comprising a database and a processor. As another example, the system of *Gardner* is not capable of storing data in the form of rules and is not capable of receiving, communicating, and generating data in the form of requests and quotes. Thus, it is not reasonable to conclude that the system of *Gardner* is equally operable to perform the tasks as recited in independent Claim 1 and that the system of Gardner does not necessarily or inherently possess the characteristics of Applicants claimed invention.

In addition, Applicants respectfully point out that "it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." Ex parte Levy, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). Applicants respectfully submit that ***the Office has failed to establish a prima facie case of anticipation in Claims 1-13 and 27-33 under 35 U.S.C. § 102 with respect to Gardner because Gardner fails to identically disclose each and every element of Applicants claimed invention, arranged as they are in Applicants claims***.

Applicants Claims are Patentable over *Gardner*

With respect to independent Claims 27-29 these claims include limitations similar to those discussed above in connection with independent Claim 1. Thus, independent Claims 27-29 are considered patentably distinguishable over *Gardner* for at least the reasons discussed above in connection with independent Claim 1.

Furthermore, with respect to dependent Claims 2-13 and 31-33: Claims 2-13 depend from independent Claim 1; Claim 31 depends from independent Claim 27; Claim 32 depends from independent Claim 28; and dependent Claim 33 depends from independent Claim 33. Thus, dependent Claims 2-13 and 31-33 are considered patentably distinguishable over *Gardner* and are

also considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for at least the reasons set forth herein, Applicants respectfully submit that Claims 1-13 and 27-33 and are not anticipated by *Gardner*. Applicants further respectfully submit that Claims 1-13 and 27-33 are in condition for allowance. Thus, Applicants respectfully request that the rejection of Claims 1-13 and 27-33 under 35 U.S.C. § 102(b) be reconsidered and that Claims 1-13 and 27-33 be allowed.

CONCLUSION:

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

25 August 2008
Date

/Steven J. Laureanti/signed
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